Supreme Court, U.S.
FILED
06-655 OCT 10 2006
OFFICE OF THE CLERK

Docket No.

SUPREME COURT OF THE UNITED STATES

WALLACE
v.
GRAPHIC MANAGEMENT ASSOCIATES

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

MARGARET WALLACE, Pro Se Petitioner
P.O. Box 8732, Allentown, PA 18105-8732
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(Related to EDPA Civil No. 04-00819
Third Circuit No. 05-5216
Title VII - Sexual Harassment in the Workplace)

QUESTIONS PRESENTED FOR REVIEW

1. Under what lawful circumstances may a Federal District Court Judge knowingly permit material attorney fraud on his Court to remain unaddressed for a full nine months?

2. Under what lawful circumstances may a Federal District Court Judge knowingly rule against the victim of the attorney fraud on his Court that was exposed for a full nine months based on that fraud?

3. Under what lawful circumstances may a Circuit Court not investigate exposed attorney fraud on the District Court, not grant Relief under FRCP Rule 60(b)(3), and enter judgment against the victim of attorney fraud?

4. When a District Court Judge knowingly acquiesces to exposed attorney fraud on his Court for a full nine months by avoiding it and refusing to deal with it, and also refuses to recuse himself twice, even after Mandamus is sought in the Circuit Court, is it the appearance of impropriety or even abuse of office?

5. When a District Court breaks down and the Judge is "incapacitated" and unable to deal with numerous frauds on the Court (himself) and on the Plaintiff, are his orders given while "incapacitated" of any effect under law?

6. Does this Court tolerate attorney fraud on the Federal Courts?

LIST OF PARTIES

Petitioner

Margaret Wallace, Pro Se

Respondents

Graphic Management Associates, Inc.

Ownership/Management National/International

Randy Seidel, former CEO

Steve Garza, former Director of Operations

Edward Oliver, former Senior Supervisor

Other

Attorney R. Michael Carr, Stevens & Lee, who represented some of the Respondents is the Attorney perpetrating attorney fraud on the District Court, and is served since the charges affect him directly, and he should be allowed to respond (defend himself).

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BASIS FOR JURISDICTION

Judgment by the Third Circuit Court in 05-5216 was entered 21 July 2006.

The statutory provision conferring jurisdiction to review the judgment in question on this Court on a writ of certiorari is 28 U.S.C. § 2101(e).

CONSTITUTIONAL PROVISIONS/STATUTES

United States Constitution, Fifth Amendment

> No person shall...be deprived of life, liberty,
>
> or property, without due process of law....

FRCP Rule 60(b)(3)

> Relief from Judgment or Order
> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party

Third Circuit Court's Rules of Attorney Disciplinary Enforcement

> Rule 1. Definitions
> 3. "Serious Crime" means any felony or any lesser crime involving false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit such a lesser crime.

STATEMENT OF CASE

This petition seeks review of a decision of the United States Court of Appeals for the Third Circuit which had jurisdiction to review under 28 U.S.C. § 1291 because the appeal was from the final order of a District Court and was an appeal as of Right under Rule 3 of the FRAP.

The District Court had jurisdiction pursuant to Title VII of the Civil Rights Acts of 1964 and 1991, Federal Question Jurisdiction, 28 U.S.C. § 1331, and 42 U.S.C. §§ 1983, 1985, 1986, and related.

The District Court case 2004 CV-819 was entered 26 February 2004 with a Right to Sue letter from the EEOC which investigated for about two years. The case charged sexual harassment of the hostile/abusive workplace environment (as opposed

to the quid pro quo type). The quid pro type was used against other women at the same GMA location in Allentown, PA.

Shortly after entry of 2004 CV-819, the Attorney for GMA, R. Michael Carr of Stevens & Lee, began to perpetrate attorney fraud on the District Court by entry of fraudulent documents into the record, approximately in April 2004.

Attorney Carr refused to let GMA answer any Federal interrogatories sent by the Plaintiff, and thwarted Discovery continually. He "bullied" the Plaintiff, becoming the embodiment of the sexual harasser himself, using the District Court as a "tool" to harass the Plaintiff by entering fake grounds for sanctions and dismissal. Judge Wiener acquiesced to his lies and material frauds exposed in the record.

At the same time, following the pattern in Chambers v. Nasco, Inc., 501 U.S. 32 (1991), he continually pressed the District Court for sanctions based on fraudulent grounds, e.g., for failure to produce documents that he knew didn't exist, etc. When the first deposition of the Pro Se Plaintiff was adverse to GMA, he demanded a second deposition that was even more adverse to GMA. When the District Court asked for the second deposition to be filed, he surreptitiously substituted the first deposition instead, since it was less adverse to GMA.

Fraud was entered into the record within two months of filing the case, approximately April 2004. Based on this fraud in the record, the Plaintiff who was still working at GMA was fired from the job because of her Title VII suit against GMA.

It was only after the fraud was in the record for about seven or eight months, and the Plaintiff had been fired from the job, that the Plaintiff's Husband realized Attorney Carr was perpetrating fraud on the District Court. Petitions were entered in the District Court to deal with this fraud. Federal Judge Charles Wiener (about 82 years old at that time) did not deal with the fraud, and the Plaintiff asked him to recuse himself, which he did with great grumbling in his order. This is cited by others without reference to the fraud he did not address.

When District Court Judge R. Barclay Surrick acquired the case in early 2005, there were no fewer than six instances of fraud in the record, and all had been exposed by the Plaintiff in petitions to the Court. One example of fraud involved bank fraud by

GMA against the Plaintiff. The other examples were fraud by Attorney Carr against the District Court.

Federal Judge R. Barclay Surrick acquired the case with all frauds clearly exposed in the record by the Plaintiff. From February 2005 to dismissal of the case in November 2005, he never mentioned these material frauds against the Plaintiff, and he never dealt with them in any way. He refused to recuse himself for not dealing with the frauds. The Plaintiff sought Mandamus in the Third Circuit Court to effect his recusal, but he dismissed the case first.

All frauds of GMA and Attorney Carr were clearly exposed before Judge Surrick acquired the case from Judge Wiener. The first act of Judge Surrick should have been to address frauds against the Plaintiff, but he didn't do this. In his handling of

the case, he seemed fair and impartial at first, but became adversarial toward the Plaintiff as the case continued, even publishing on the Internet an under-color-of-law order based on his failure to deal with the frauds. He plainly acquiesced to the frauds.

In the end his Court had ceased to be a Court of law because of his failure to address the frauds of GMA and their Attorney Carr. He asked the Plaintiff to appear in Court (which was no longer a Court of law), and the Plaintiff did not appear since she had requested his recusal twice, including Mandamus.

GMA and Attorney Carr had caused the breakdown of the District Courts of Federal Judges Wiener and Surrick through fraud on their Courts. They also caused the breakdown of State Courts in State related issues using the same frauds, but this is

the subject of another Federal suit in District Court.

All frauds on the District Court and Plaintiff of 2004 CV-819 are material, and are easily checked in the record to determine whether they are frauds.

Judge Surrick dismissed 2004 CV-819 under Poulis v. State Farm Fire and Cas. Co.,747 F.2d 863, 868 (3d Cir. 1984), totally unsupported without a single example. The Plaintiff appealed to the Third Circuit Court in 05-5216 because the judgment was based on attorney fraud on the District Court and abuse of office (Judge Surrick).

Judge Surrick's Court had broken down long before the under-color-of-law dismissal due to the frauds of GMA and Attorney Carr, and was no longer a Court of law when the final order and several preceding orders were given.

The Third Circuit Court scrupulously avoided all mention of fraud in their decision. They never considered the questions relating to fraud on the District Court or on the Plaintiff. They even ordered the Plaintiff, victim of the frauds, to pay costs.

The Third Circuit Court based their decision on the "hooting and hollering" of Attorney Carr in the record at the time Judge Wiener had the case to support dismissal under Poulis, though this was a full year and more before the actual dismissal. They avoided mention of Judge Surrick's abuse of office.

The Third Circuit also avoided mention that the evidence in the record clearly showed Judge Surrick's Court had broken down, and that he did not address any of the material frauds against the

Plaintiff who was the victim of the frauds of GMA and Attorney Carr.

ARGUMENT

This is the big brother sequel of Chambers v. Nasco, Inc., 501 U.S. 32 (1991). This case involves attorney fraud on the District Court that is so great it caused two District Courts to break down (and also seven State Courts addressed in another case).

Fraud on the District Court resulted in abuse of office when the District Court Judge ruled against the Plaintiff based on the frauds. The District Court had ceased to be a proper Court of law.

This Court deals with fraud, even if other Courts do not. There are no fine points of law involved here, only integrity and adherence to law. There are few cases of attorney fraud on the Court,

because only the most careless of attorneys commit such fraud that is easily proved from the record.

The Plaintiff cites three main standards to deal with attorney fraud on the Court:

(1) Chambers v. Nasco, Inc., 501 U.S. 32 (1991).

(2) The Third Circuit Court's Rules of Attorney Disciplinary Enforcement.

(3) FRCP 60(b)(3) Relief from Judgment or Order.

These three standards are sufficient for any District Court or Circuit Court to address attorney fraud on the Federal Courts. No other case law is needed.

In the adjudication of Chambers v. Nasco, Inc., 501 U.S. 32 (1991), this Court held:

> In this regard, if a court finds "that fraud has been practiced upon it, or that the very temple of justice has been defiled," it may assess attorney's fees against the responsible party, Universal Oil, supra, at 580,...

Much of the bad-faith conduct by Chambers, however, was beyond the reach of the rules, his entire course of conduct throughout the lawsuit evidenced bad faith and an attempt to perpetrate a fraud on the court,...

JUSTICE WHITE delivered the opinion of the Court
This "historic power of equity to set aside fraudulently begotten judgments," Hazel-Atlas, 322 U.S., at 245 , is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." Id., at 246. Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. Universal Oil, supra, at 580.

The court likewise declined to impose sanctions under 1927, both because the statute applies only to attorneys, and therefore would not reach Chambers, and because the statute was not broad enough to reach "acts which degrade the judicial system," including "attempts to deprive the Court of jurisdiction, fraud, misleading and lying to he Court." Ibid.

Attorney Carr's multiple frauds on the District Court effected dismissal of the Title VII sexual harassment case. He entered fraudulent documents into the record, setting the retaliatory basis for the Plaintiff's termination of employment for bringing suit against GMA.

Neither the District Court nor the Third Circuit Court "conduct[ed] an independent investigation in order to determine whether it ha[d] been the victim of fraud." (Chambers)

The Plaintiff had entered at least eight petitions in the District Court exposing these frauds and seeking justice, but not one of these petitions was answered. Technically, the Third Circuit should not have taken the appeal, since all issues of the case had not been disposed of, and this was stated in the

Plaintiff's appeal.

In refusing to deal with the frauds of Attorney Carr/GMA, the District Court and the Third Circuit Court acted contrary to the example set by this Court, that fraud on the Court must be dealt with. Fraud degrades the Justice System. Judges who acquiesce to it abuse their offices and act contrary to the examples set by this Court, the FRCP, and the Rules of Attorney Disciplinary Enforcement (3rd Cir.).

In supporting the District Court's dismissal under Poulis, the Third Circuit Court needed to go back to nine months previously when Judge Wiener had the case. They "whitewashed" the acts of Judge Surrick who had tolerated/acquiesced to attorney fraud for nine full months, not mentioning his toleration/acquiescence to fraud on his Court.

Justice is justice. It is a "serious crime" when Third Circuit Court Judges disobey their own Rules of Attorney Disciplinary Enforcement and don't deal with attorney fraud that is exposed before them in numerous petitions.

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. United States v. Lee, 106 U.S. [196,] 220 [(1882)]." 438 U.S., at 506.

Corruption in the Courts is an unpleasant matter that Judges tend to cover up for each other, believing mistakenly that they are helping justice. Breaking the law only causes the situation to grow worst, until at some time in the near future the law established by Judges of integrity ceases to exist. A little rottenness rots the whole system. This case is a

case based on such rottenness, attorney fraud on the Court, and acquiescence to that fraud by the Courts.

Since there are no fine points of law involved, all that is left is integrity and Judicial accountability, or lack of them. Very little investigation is required since the frauds are clearly exposed in the record. They are either there, or they aren't. The Reasonable Person, presumed to be honest and possessing integrity, would see them, as would a 10-year old.

In Griswold v. Connecticut, 381 U.S. 479 (1965), this Court has said:

> Perhaps the clearest, frankest and briefest explanation of how this due process approach works is the statement in another case handed down today that this Court is to invoke the Due Process Clause to strike down state procedures or laws which it can "not tolerate." Linkletter v. Walker, post, p. 618, at 631.

The Petitioner believes such action applies in this Court today, that under the Due Process Clause it will also strike down Federal procedure which it can "not tolerate". That procedure is acquiescence to attorney fraud on the District Court, and a "blind eye" of the Third Circuit Court to act with integrity under FRCP Rule 60(b)(3), their own Rules of Attorney Disciplinary Enforcement, and precedent set by this Court in Chambers v. Nasco, Inc., 501 U.S. 32 (1991).

Fraud is fraud, a "serious crime" in the words of the Third Circuit Court, no matter who commits it or who acquiesces to it. 18 U.S.C. § 242 makes it clear that even Judges are subject to trial for willful deprivation of Rights:

> [Footnote 32] Finally, in those cases in which the judicial process fails, the public is

> not powerless to punish misconduct. Like prosecutors and judges, official witnesses may be punished criminally for willful deprivations of constitutional rights under 18 U.S.C. 242. Briscoe v. LaHue, 460 U.S. 325 (1983)

This Court has power to nullify any ruling based on attorney fraud and acquiescence to it in the Federal Courts:

> What the majority hold is that the Due Process Clause empowers this Court to nullify any state law if its application "shocks the conscience," offends "a sense of justice" or runs counter to the "decencies of civilized conduct." Rochin v. California, 342 U.S. 165 (1952)

Attorney fraud on the Court and acquiescence to it certainly "shocks the conscience," offends "a sense of justice" or runs counter to the "decencies of civilized conduct."

In United States v. Salerno, 481 U.S. 739 (1987) this Court held:

> The Due Process Clause of the Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." This Court has held that the Due Process Clause protects individuals against two types of government action. So-called "substantive due process"prevents the government from engaging in conduct that "shocks the conscience," Rochin v. California, 342 U.S. 165, 172 (1952), or interferes with rights "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325 -326 (1937). When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. Mathews v. Eldridge, 424 U.S. 319, 335 (1976). This requirement has traditionally been referred to as "procedural" due process.

It is clear that the Petitioner was deprived of both Substantive and Procedural Due Process due to attorney fraud and acquiescence to it. This is conduct this Court can "not tolerate" (Griswold).

In Mireles v. Waco, 502 U.S. 9 (1991):

> This Court in Stump made clear that "whether an act by a judge is a "judicial" one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." 435 U.S., at 362. See also Forrester v. White, 484 U.S., at 227 -229.

It is certain that acquiescence to fraud on the Court for nine full months is not "a function normally performed by a judge" because it contradicts this Court's ruling in Chambers v. Nasco, Inc., 501 U.S. 32 (1991), the Third Circuit's Rules of Attorney Disciplinary Enforcement, FRCP Rule 60(b)(3), and the whole line of cases arising from Rochin.

If we are to believe the Third Circuit's Rules of Attorney Disciplinary Enforcement, fraud is a "serious crime", and "serious crime" and the law are antithetical and can never meet. Not dealing with fraud, a "serious crime", is a serious crime in itself,

particularly in a Court of law empowered to deal with it. There are no extenuating circumstances, no national security issues, no reason at all for not dealing with attorney fraud on the District Court.

Congress has set up a mechanism to deal with attorney fraud on the Court, and there are no special factors counseling hesitation in the absence of such a mechanism, FRCP Rule 60b)(3). Moreover, this Court is not powerless to deal with an attorney causing the breakdown of two District Courts (and seven State Courts in a related case).

REASONS FOR ISSUANCE OF THE WRIT

1. Pursuant to Rule 10(a) the Third Circuit Court "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court,

as to call for an exercise of this Court's supervisory power".

2. Pursuant to Rule 10(c) the Third Circuit Court "has decided an important federal question in a way that conflicts with relevant decisions of this Court".

3. The Third Circuit Court sanctioned attorney fraud on the District Court EDPA by failing to deal with fraud (in appeal) as the law requires.

4. The decision of the Third Circuit Court is contrary to FRCP Rule 60(b)(3).

5. The decision of the Third Circuit Court is contrary to their own Rules of Attorney Disciplinary Enforcement which state fraud is a "serious crime".

6. The decision of the Third Circuit Court is contrary to this Court's stand against fraud on the Court in Chambers v. Nasco, Inc., 501 U.S. 32 (1991).

7. The decision of the Third Circuit Court is contrary to the long line of cases after Rochin.

8. The decision of the Third Circuit Court is contrary to law, fraud being a "serious crime".

9. The decision of the Third Circuit Court is contrary to Hazel-Atlas, 322 U.S., at 245, the "historic power of equity to set aside fraudulently begotten judgments".

10. The decision of the Third Circuit Court is contrary to Hazel-Atlas, 322 U.S., at 245:

"tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against

the institutions set up to protect and safeguard the public

11. The decision of the Third Circuit Court is contrary to United States v. Lee, 106 U.S. [196,] 220 [(1882)]." 438 U.S., at 506:

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

12. Attorney fraud on the District Court caused breakdown of two District Courts (and seven State Courts addressed in another proceeding).

13. Judge Surrick acquiesced to Attorney fraud that was exposed for a full nine months.

14. In acquiescing to attorney fraud on his Court and refusing to recuse himself twice Judge Surrick gave the appearance of impropriety.

15. Neither Judge Surrick nor the Third Circuit Court considered the more than eight petitions exposing the fraud on the District Court.

16. The Third Circuit Court took the appeal when at least eight petitions exposing the fraud had not been dismissed or dealt with (contrary to their jurisdiction under 28 U.S.C. § 1291 which requires that all petitions be dealt with before appeal. They lacked jurisdiction under 28 U.S.C. § 1291 to take the appeal.)

17. Acquiescence to attorney fraud for nine full months is not an act normally performed by a Judge per Mireles v. Waco, 502 U.S. 9 (1991).

18. The judgments of the District Court and the Third Circuit Court based on attorney fraud are contrary to Substantive and Procedural

Due Process of Law and Equal Protection (Fifth Amendment).

19. The Judicial process failed, and this Court in Briscoe v. LaHue, 460 U.S. 325 (1983) held:

> [Footnote 32] Finally, in those cases in which the judicial process fails, the public is not powerless to punish misconduct. Like prosecutors and judges, official witnesses may be punished criminally for willful deprivations of constitutional rights under 18 U.S.C. 242.

20. Breakdown of two Federal (and seven State) Courts by a single Attorney (Carr) is a new record in attack on the Justice System, law, and integrity, and it must be dealt with to prevent similar attacks on the Courts.

21. Neither the District Court EDPA nor the Third Circuit Court performed the investigation for fraud on the Courts pursuant to Chambers.

22. Judgments of the District Court EDPA and the Third Circuit Court are contrary to Braden v. United States, 365 U.S. 431 (1961):

> [Footnote 12] These "tests" include whether the law in question "shocks the conscience," offends "a sense of justice," runs counter to the "decencies of civilized conduct," is inconsistent with "an ordered concept of liberty," offends "traditional notions of fair play and substantial justice," is contrary to "the notions of justice of English-speaking peoples," or is unjustified "on balance." See Rochin v. California, 342 U.S. 165, 175 -176 (concurring opinion); Uphaus v. Wyman, 364 U.S. 388, 392 -393 (dissenting opinion). Significantly, in none of these "tests" does the result to be obtained depend upon the question whether there has been an abridgment of rights protected by the plain language of the Bill of Rights.

23. Regarding fair treatment in the Federal Courts, this Court held in United States v. Salerno, 481 U.S. 739 (1987):

The Due Process Clause of the Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." This Court has held that the Due Process Clause protects individuals against two types of government action. So-called "substantive due process"prevents the government from engaging in conduct that "shocks the conscience," Rochin v. California, 342 U.S. 165, 172 (1952), or interferes with rights "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 3'9, 325 -326 (1937). When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. Mathews v. Eldridge, 424 U.S. 319, 335 (1976). This requirement has traditionally been referred to as "procedural" due process.

24. The decision of the Third Circuit debases the law by permitting exposed attorney fraud on the District Court to stand in judgment.

25. This Court cannot tolerate the procedures used to deny justice to the Petitioner. Linkletter v. Walker, cited in Griswold (1965).

26. The District Court EDPA and the Third Circuit Court did not grant the Petitioner Relief under the clear guidelines in FRCP Rule 60(b)(3).

The Petitioner has demonstrated beyond any doubt that the Writ of Certiorari should issue. This is to uphold the law:

> "tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public. Hazel-Atlas, 322 U.S., at 245

The Petitioner thanks the Court for Justice under the Fifth Amendment and law. Justice is the Guardian of Liberty.

Respectfully submitted,

Margaret Wallace,
Pro Se Plaintiff

Date: 10 October 2006/
resubmitted 6 November 2006

APPENDIX

Judgement Entered, Third Circuit Court,
21 July 2006 1

District Court Order, 18 November 2005 12

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10 October 2006 16

Note:
This Petition was accompanied by Petition for Relief from Fraud under FRCP Rule 60(b)(3), but this Court does not grant such Relief. To incorporate the thought of that Petition into this Petition required addition of Item 26 on page 30 submitted 6 November 2006, and removal of the paragraph stating Petition for Relief from Fraud under FRCP Rule 60(b)(3) was being submitted. If Relief from attorney fraud on the Courts is not granted at any level of the Federal Courts, contrary to FRCP 60(b)(3), then justice is not possible to attain.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-5216

MARGARET WALLACE,
Appellant

v.

GRAPHIC MANAGEMENT ASSOCIATES, AND THE MANAGEMENT AND OWNERSHIP THEREOF, CEO, PRESIDENT, HOLDING COMPANY, AND OTHER OWNERSHIP AND /OR MANAGEMENT OF GMA, NATIONALLYAND/OR INTERNATIONALLY (PRESENTLY NOT IDENTIFIED); STEVE GARZA, MANAGER OF THIS LOCATION; EDWARD OLIVER, FORMER MANAGER AT THIS LOCATION

On Appeal from the United States District Court for the Eastern District of Pennsylvania
(D.C. Civ. No. 04-CV-00819)
District Judge: Honorable R. Barclay Surrick

Submitted under Third Circuit LAR 34.1(a)
June 7, 2006
Before McKee, Fuentes and Nygaard, Circuit Judges
Filed July 21, 2006
OPINION

PER CURIAM

Margaret Wallace, appearing pro se, appeals the District Court's dismissal of her complaint for failure to comply with the Court's scheduling and discovery orders. For the reasons that follow, we will affirm.

On February 26, 2004, Margaret Wallace filed a complaint in the United States District Court for the Eastern District of Pennsylvania against her employer Graphic Management Associates, the manager of the facility where she worked, Steve Garza, and her former supervisor, Edward Oliver. Wallace alleged that she was subjected to a sexually hostile work environment by Oliver, discriminated against on the basis of race and national origin in violation of Title VII of the Civil Rights Act of 1964,

42 U.S.C. §§ 2000e-2000e-17, and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. §§ 951-963, and retaliated against for complaining of her discriminatory treatment.

The action was originally assigned to the Honorable Charles Wiener. Defendants noticed Wallace's deposition for April 23, 2004, on which date Wallace appeared, but refused to answer any questions, except in writing. The District Court encouraged Wallace to seek an attorney and directed her to appear for her deposition on May 14, 2004. After Wallace failed to appear on May 14, defendants moved for sanctions, and the District Court issued an order directing Wallace to show cause why the action should not be dismissed for failure to prosecute. At the hearing on the order to

show cause, the District Court denied defendants' motion and ordered Wallace to appear for her deposition on June 4, 2004.

Wallace appeared for her deposition on June 4, at which time she testified that she had taken contemporaneous notes relating to her employment and allegations of sexual harassment. These notes had not been produced to defendants during the course of discovery. According to defendants, Wallace stated that she was unwilling to produce the documents until trial. Defendants then moved for dismissal of the action based on Wallace's refusal to cooperate in discovery. The Court again issued an order to show cause why the action should not be dismissed for failure to prosecute, and at the hearing, instructed Wallace to produce a copy of her notes

and other requested items and to appear for the continuation of her deposition on July 16, 2004.

Wallace failed to produce her notes as instructed by the Court. On July 22, 2004, Defendants filed a third motion seeking dismissal of the action for failure to comply with the Court's discovery orders. The Court issued a third order to show cause why the action should not be dismissed for failure to comply with the Court's directives and set a hearing on the matter on August 11, 2004. Wallace failed to appear at the hearing, later informing the Court that she was ill and on the day of the hearing and had therefore been unable to attend.

On August 23, 2004, the Court issued an order indicating that it would "out of an abundance of leniency considering that plaintiff is pro se, allow

her one last opportunity to appear before the court." The Court set another hearing for September 1, 2004, and indicated that should Wallace fail to appear, it would summarily dismiss the action with prejudice. Following the hearing, the Court ordered that Wallace provide defendants with all of her contemporaneous notes no later than September 8, 2004, and indicated that failure to do so would result in summary dismissal of the action.

On December 10, 2004, the Court scheduled trial to commence on January 24, 2005. Following a status conference on January 18, 2005, on Wallace's motion, Judge Wiener recused himself pursuant to 28 U.S.C. § 455. In doing so, the Court explained:

> ...For whatever reason, plaintiff has proceeded in an obdurate manner by refusing to appear at her deposition, refusing to cooperate at her deposition, failing to respond

> to written discovery, failing to turn over to defense counsel, as directed by the Court, certain notes that she had made during her employment with defendant, failing to appear at scheduled hearings before this Court and overall failing to prosecute her claim in a timely manner. Plaintiff's conduct has forced the defendant to file numerous motions for sanctions, including dismissal of this action, all of which the Court has denied out of great leniency to the plaintiff's pro se status. Despite this leniency, plaintiff contends that this Court is biased against her.

Following Judge Wiener's recusal, the case was assigned to The Honorable R. Barclay Surrick. On September 27, 2005, the Court ordered the parties to appear at a conference on November 17, 2005. Wallace filed a "Petition in Opposition to Proposed Conference" in which she maintained that Judge Surrick was biased against her and therefore she opposed any meeting at which he would be present. Wallace concurrently filed a motion

requesting that Judge Surrick recuse himself before November 17. On October 14, 2005, the Court issued an order denying Wallace's motions and admonishing her that failure to appear at the status conference would result in the dismissal of her complaint. When Wallace did not appear, the Court granted defendants' oral motion to dismiss the complaint, holding that "for whatever reason, Plaintiff is delaying this matter and making it impossible to proceed to final disposition, and that the effect of Plaintiff's conduct is to cause great hardship and expense to Defendants." The Court noted that Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863 (3rd Cir. 1984), required that the Court weigh six relevant factors before dismissing an action as a sanction for failure to prosecute, and concluded

that, after considering these factors, it was clear that dismissal was appropriate. Wallace timely appealed.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We review a dismissal for failure to prosecute for abuse of discretion. In re Jewelcor Inc., 11 F.3d 394, 397 (3rd Cir. 1993). Rule 37(b)(2)(C) of the Federal Rules of Civil Procedure authorizes a district Court to dismiss an action should a party fail to obey an order to provide or permit discovery. In assessing the propriety of such an action, we have stated that:

> we will be guided by the manner in which the trial court balanced the following factors, which have been enumerated in the earlier cases, and whether the record supports its findings: (1) the extent of the *party's* personal *responsibility*; (2) the *prejudice* to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a *history* of dilatoriness; (4) whether the

> conduct of the party or the attorney was *willful* or in *bad faith*; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of *alternative sanctions*; and (6) the *meritoriousness* of the claim or defense.

Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863, 867 (3rd Cir. 1984).

A review of the Poulis factors makes it clear that the District Court acted well within its discretion in dismissing Wallace's action. Any delay or failure to follow the Court's orders was directly attributable to Wallace, as she was representing herself pro se. As the District Court noted, defendants have been prejudiced by Wallace's delay and her failure to comply with the Court's discovery and scheduling orders. Wallace's refusal to turn over her notes has precluded defendants from completing her deposition or fully preparing for trial. Furthermore, the Court

has noted that Wallace's refusal to participate in discovery and to follow court orders has been ongoing. While the District Court did not make explicit findings on whether her conduct was willful or in bad faith, whether alternative sanctions would be effective, or whether her underlying claims are meritorious, the Court did indicate that it considered all of the relevant factors and that they supported dismissal. Given Wallace's history of noncompliance and the ample opportunities provided to her by the District Court to rectify her behavior, we cannot say that the District Court abused its discretion in ultimately dismissing her case.

Accordingly, we will affirm the judgment of the District Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

MARGARET WALLACE

GRAPHIC MANAGEMENT ASSOCIATES, INC.,
STEVE GARZA, AND EDWARD OLIVER

CIVIL ACTION NO: 04-CV-0819

ORDER

AND NOW, this 18th day of November 2005, upon consideration of the failure of pro se Plaintiff Margaret Wallace to appear for a conference in Courtroom 8A scheduled for 3:30p.m.on November 17, 2005 by Order of this Court dated September 27, 2005 (Doc. No 84),[1] and the resulting Oral Motion to Dismiss Complaint made by Defense Counsel, and it appearing that Plaintiff was aware of this Conference and, in fact, filed a Petition in Opposition To Proposed Conference (Doc. No. 85) and a Petition

For a Stay In The Proceedings (Doc. No. 91) both of which were denied by Orders dated October 14, 2005 and November 10, 2005 respectively (Doc. Nos. 88, 92), and it appearing that Plaintiff has already filed two Petitions requesting that this Judge recuse himself but reciting no valid reason for recusal (Doc. Nos. 79, 86), and it being apparent that for whatever reason, Plaintiff is delaying this matter and making it impossible to proceed to final disposition, and that the effect of Plaintiff's conduct is to cause great hardship and expense to Defendants,[2] it is ORDERED that Defendant's Oral Motion to Dismiss Complaint is GRANTED and Plaintiff's Complaint is DISMISSED.

IT IS SO ORDERED.

BY THE COURT:

R. Barclay Surrick, Judge

[1] Plaintiff has failed to cooperate throughout the litigation process. In a Memorandum and Order filed by the Honorable Charles R. Weiner, in which, at Plaintiff's request, Judge Weiner recused, Judge Weiner noted that Plaintiff had failed to appear and refused to cooperate at her deposition, failed to respond to written discovery, failed to appear at scheduled hearings before the Court and generally failed to prosecute her claim in a timely manner (Doc. No. 58)

[2] The Third Circuit in *Poulis v. State Farm Fire and Casualty Co.*, 747 F.2d 863 (3rd Cir. 1984) laid out the following six factors, which must be weighed when dismissal is used as a sanction: "(1) the extent of a party's personal responsibility; (2) the

prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was wilful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of atlternative sanctions; and (6) the meritoriousness of the claim or defense." *Id.* at 868. After considering these factors in the instant case, it is clear that dismissal is appropriate.

The Petitioner has demonstrated beyond any doubt that the Writ of Certiorari should issue. This is to uphold the law:

> "tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public. Hazel-Atlas, 322 U.S., at 245

Accompanying this petition for Writ of Certiorari is a Petition for Relief from fraud and judgment based on fraud under FRCP Rule 60(b)(3).

The Petitioner thanks the Court for Justice under the Fifth Amendment and law. Justice is the Guardian of Liberty.

Respectfully submitted,

Margaret Wallace,
Pro Se Plaintiff

Date: 10 October 2006